

UNITED STATES OF AMERICA
DEPARTMENT OF COMMERCE

In the Matter of

FMC CORPORATION

Case No. 96-19

ORDER

The Office of Antiboycott Compliance, Bureau of Export Administration, U.S. Department of Commerce ("Department"), having determined to initiate an administrative proceeding pursuant to Section 11(c) of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 1998)) (the "Act")¹ and the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (1998)), against FMC Corporation, ("FMC"), a domestic concern resident in the State of Illinois, based on the allegations set forth in the Proposed Charging Letter, dated August 14, 1998, attached hereto and incorporated herein by this reference;

¹ The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)), August 14, 1996 (3 C.F.R., 1996 Comp. 298 (1997)), August 13, 1997, (3 C.F.R., 1997 Comp. 306 (1998)) and August 13, 1998, (63 Fed. Reg. 44121, August 17, 1998), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1998)).

The Department and FMC having entered into a Settlement Agreement, incorporated herein by this reference, whereby the parties have agreed to settle this matter; and

I, the Assistant Secretary for Export Enforcement, having approved the terms of the Settlement Agreement:

IT IS THEREFORE ORDERED THAT,

FIRST, a civil penalty in the amount of \$13,000 is assessed against FMC;

SECOND, FMC shall pay to the Department the sum of \$13,000 within thirty days of the date of this Order, as specified in the attached instructions.

THIRD, pursuant to the Debt Collection Act of 1982, as amended (U.S.C.A. §§ 3701-3720E (1983 and Supp. 1998)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and, if payment is not made by the due date specified herein, FMC will be assessed, in addition to interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

FOURTH, as authorized by Section 11(d) of the Act, the timely payment of the sum of \$13,000 is hereby made a condition to the granting, restoration or continuing validity of any export license, permission, or privilege granted, or to be granted, to FMC. Accordingly, if FMC should fail to pay the sum of \$13,000 in a timely manner, I will enter an Order under the authority of Section 11(d) of the Act denying all of FMC's export privileges for a period of one year from the date of the entry of this Order; and

FIFTH, the Proposed Charging Letter, the Settlement Agreement and this Order shall be made available to the public, and a copy of this Order shall be served upon FMC.

This Order is effective immediately.



F. Amanda DeBusk
Assistant Secretary for Export Enforcement
Bureau of Export Administration

Entered this 18th day of September, 1998

Attachments

NOTICE

The Order to which this Notice is attached describes the reasons for the assessment of the civil monetary penalty and the rights, if any, that FMC may have to seek review, both within the U.S. Department of Commerce and the courts. It also specifies the amount owed and the dates by which payment of the civil penalty is due and payable.

Under the Debt Collection Act of 1982, as amended (31 U.S.C.A. §§ 3701-3720E (1983 and Supp. 1997)) and the Federal Claims Collection Standards (4 C.F.R. Parts 101-105 (1997)), interest accrues on any and all civil monetary penalties owed and unpaid under the Order, from the date of the Order until paid in full. The rate of interest assessed FMC is the rate of the current value of funds to the U.S. Treasury on the date that the Order was entered. However, interest is waived on any portion paid within 30 days of the date of the Order. See 31 U.S.C.A. § 3717 and 4 C.F.R. § 102.13.

The civil monetary penalty will be delinquent if not paid by the due date specified in the Order. If the penalty becomes delinquent, interest will continue to accrue on the balance remaining due and unpaid, and FMC will also be assessed both an administrative charge to cover the cost of processing and handling the delinquent claim and a penalty charge of six percent per year. However, although the penalty charge will be computed from the date that the civil penalty becomes delinquent, it will be assessed only on sums due and unpaid for over 90 days after that date. See 31 U.S.C.A. § 3717 and 4 C.F.R. § 102.13.

The foregoing constitutes the initial written notice and demand to FMC in accordance with section 102.2(b) of the Federal Claims Collection Standards (4 C.F.R. § 102.2(b)).

INSTRUCTIONS FOR PAYMENT OF SETTLEMENT AMOUNT

1. The checks should be made payable to:

U.S. DEPARTMENT OF COMMERCE

2. The checks should be mailed to:

U.S. Department of Commerce
Bureau of Export Administration
Room 6622
14th & Constitution Avenue, N.W.
Washington, D.C. 20230

Attention: Miriam Cohen

In the Matter of

FMC CORPORATION

Case No. 96-19

This agreement is made by and between FMC Corporation ("FMC"), a domestic concern resident in the State of Illinois, and the United States Department of Commerce ("Department"), pursuant to Section 766.18(a) of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (1998)), issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 1998)) (the "Act").¹

¹ The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (C.F.R., 1995 Comp. 501 (1996)), August 14, 1996 (3 C.F.R., 1996 Comp. 298 (1997)), August 13, 1997 (3 C.F.R., 1997 Comp. 306 (1998)) and August 13, 1998 (63 Fed. Reg. 44121, August 17, 1998), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1998)).

WHEREAS, the Office of Antiboycott Compliance, Bureau of Export Administration, U.S. Department of Commerce, has notified FMC of its intention to initiate an administrative proceeding against FMC pursuant to Section 11(c) of the Act by issuing the Proposed Charging Letter, dated August 14, 1998, a copy of which is attached hereto and incorporated herein by this reference; and

WHEREAS, FMC has reviewed the Proposed Charging Letter and is aware of the allegations against it and the administrative sanctions which could be imposed against it if the allegations are found to be true; FMC fully understands the terms of this Settlement Agreement, and enters into this Settlement Agreement voluntarily and with full knowledge of its rights; and FMC states that no promises or representations have been made to it other than the agreements and considerations herein expressed; and

WHEREAS, FMC neither admits nor denies the truth of the allegations, but wishes to settle and dispose of the allegations made in the Proposed Charging Letter by entering into this Settlement Agreement; and

WHEREAS, FMC agrees to be bound by the appropriate Order ("Order") when entered;

NOW, THEREFORE, FMC and the Department agree as follows:

1. Under the Act and the Regulations, the Department has jurisdiction over FMC with respect to the matters alleged in the Proposed Charging Letter.
2. In complete settlement of all matters set forth in the Proposed Charging Letter, FMC will pay to the Department, within 30 days of service upon it of the appropriate Order, when entered, the amount of \$13,000.
3. As authorized by Section 11(d) of the Act, timely payment of the amount agreed to in paragraph 2 is hereby made a condition of the granting, restoration, or continuing validity of any export license, permission, or privilege granted, or to be granted, to FMC. Failure to make payment of this amount, in a timely manner, shall result in the denial of all of FMC's export privileges for a period of one year from the date of entry of the appropriate Order.
4. Subject to the approval of this Settlement Agreement pursuant to paragraph 9 hereof, FMC hereby waives all rights to further procedural steps in this matter (except with respect to any alleged violation of this Settlement

Agreement or the appropriate Order, when entered)
including, without limitation, any right to:

- a. an administrative hearing regarding the allegations in the Proposed Charging Letter;
 - b. request a refund of the funds paid by FMC pursuant to this Settlement Agreement and the appropriate Order, when entered; or
 - c. seek judicial review or otherwise contest the validity of this Settlement Agreement or the appropriate Order, when entered.
5. The Department, upon entry of the appropriate Order, will not subsequently initiate any administrative or judicial proceeding, or make a referral to the Department of Justice for criminal proceedings against FMC, with respect to any violation of Section 8 of the Act or Part 769 or redesignated Part 760 of the Regulations arising out of the transactions set forth in the Proposed Charging Letter or any other transaction that was disclosed to or reviewed by the Department in the course of its investigation.

6. FMC understands that the Department will disclose publicly the Proposed Charging Letter, this Settlement Agreement, and the appropriate Order, when entered.
7. This Settlement Agreement is for settlement purposes only, and does not constitute an admission by FMC that it has violated the Regulations or an admission of the truth of any allegation contained in the Proposed Charging Letter or referred to in this Settlement Agreement. Therefore, if this Settlement Agreement is not accepted and the appropriate Order not entered by the Assistant Secretary for Export Enforcement, the Department may not use this Settlement Agreement against FMC in any administrative or judicial proceeding.
8. No agreement, understanding, representation or interpretation not contained in this Settlement Agreement may be used to vary or otherwise affect the terms of this Settlement Agreement or the appropriate Order, when entered. This Settlement Agreement shall not bind, constrain or otherwise limit any action by any other agency or department of the United States Government with respect to the facts and circumstances herein addressed.

9. This Settlement Agreement will become binding on the Department only when approved by the Assistant Secretary for Export Enforcement by entering the appropriate Order.

FMC CORPORATION

Paul M. Baker

Date: _____

U.S. DEPARTMENT OF COMMERCE

Dexter M. Price

Dexter M. Price
Director
Office of Antiboycott Compliance

Date: September 8, 1998



UNITED STATES DEPARTMENT OF COMMERCE
Bureau of Export Administration
Washington, D.C. 20230

PROPOSED CHARGING LETTER

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

August 14, 1998

FMC Corporation
200 East Randolph Drive
Chicago, IL 60601

Case No. 96-19

Gentlemen/ladies:

We have reason to believe and charge that you, FMC Corporation, (FMC), have committed ten violations of the Export Administration Regulations, currently codified at 15 C.F.R. Parts 730-774 (1998), (the Regulations),¹ issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 and Supp. 1998))² (the "Act").

We charge that with intent to comply with, further or support an unsanctioned foreign boycott, you, in one instance furnished information concerning another person's business relationships with or in a boycotted country and in two instances furnished information about other persons' business relationships with or in a boycotting country; activities prohibited by Section 769.2(d) of the former Regulations, and not excepted. We charge you with three violations of Section 769.2(d) of the former Regulations.

The alleged violations occurred during 1993 and 1994. The Regulations governing the violations at issue are found in the 1993 and 1994 versions of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1993 and 1994)). Those Regulations define the violations that BXA alleges occurred and are referred to hereinafter as the former Regulations. Since that time, the Regulations have been reorganized and restructured. The restructured Regulations established the procedures that apply to the matters set forth in this letter.

The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 comp. 501 (1996)) and August 14, 1996 (3 C.F.R., 1996 Comp. 298 (1997)), August 13, 1997 (3 C.F.R., 1997 Comp. 306 (1998)) and August 13, 1998 (63 Fed. Reg. 944121, August 17, 1998), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1998)).



We also charge that you failed, in seven instances, to report to the Office of Antiboycott Compliance your receipt of requests to engage in Restrictive Trade Practices or boycotts, pursuant to Section 769.6 of the former Regulations.

We allege that:

1. You are a domestic concern resident in the State of Illinois and, as such, you are a United States person as defined in Section 760.1(b) of the Regulations.
2. During the period of October 1993 through March 1994, you engaged in transactions involving the sale or transfer of goods or services including information from the United States to Jordan, Oman, Syria, Kuwait, Abu Dhabi in the U.A.E. and Lebanon, activities in the interstate or foreign commerce of the United States as defined in Section 769.1(d) of the former Regulations.
3. In connection with a transaction from Kuwait, referred to in paragraph 2 above, on or about March 4, 1994, you submitted Certificate of Origin, # 94 08294, for exports to Kuwait National Petroleum Co.(KSC), Shuaiba, Kuwait, to a U.S. bank for payment. You provided the following statement on the Certificate of Origin:

WE HEREBY CERTIFIED [sic] THAT THE ABOVE GOODS ARE NOT OF ISRAEL ORIGIN NOR DO THEY CONTAIN ANY ISRAEL MATERIAL.
4. By submitting the Certificate of Origin, as described in paragraph 3, above, you furnished information concerning another person's business relationships with or in a boycotted country, an activity prohibited by Section 769.2(d) of the former Regulations, and not excepted. We hereby charge you with one violation of Section 769.2(d) of the former Regulations.
5. In connection with the transaction with Kuwait, referred to in paragraphs 3 & 4 above, during March of 1994, your agent certified that the vessel "... is not blacklisted by the Arab League ...". In a separate certificate, your agent certified, that "...the named vessel is not registered or owned by other persons or companies than the mentioned [sic] above...."
6. By furnishing the information referred to in paragraph 5 above, your agent furnished, on your behalf, two items of information about other persons' business relationships with or in a boycotting country. We charge you with two violations of Section 769.2(d) of the former Regulations.

7. In connection with the transactions referred to in paragraph 2 above, during July 1993, October 1993, November 1993, and February 1994, you received requests, described in Table A, which is attached and incorporated by this reference
8. The requests described in Table A constitute requests to engage in restrictive trade practices or boycotts which you were required to report to the Department. By failing to report, in a timely manner, your receipt of a boycott request, on eight occasions, you have committed eight violations of Section 769.6 of the former Regulations. We hereby charge you with eight violations of Section 769.6 of the former Regulations.

Accordingly, administrative proceedings are instituted against you pursuant to Part 766 of the Regulations for the purpose of obtaining an order imposing administrative sanctions.³

You are entitled to a hearing on the record as provided in Section 766.6 of the Regulations. If you wish to have a hearing on the record, you must file a written demand for it with your answer. You are entitled to be represented by counsel, and, under Section 766.18 of the Regulations, to seek a settlement agreement.

If you fail to answer the allegations contained in this letter within thirty days after service as provided in Section 766.6, such failure will be treated as a default under Section 766.7.

As provided in Section 766.3, I am referring this matter to the Administrative Law Judge. Pursuant to an Interagency Agreement between BXA and the U.S. Coast Guard, the U.S. Coast Guard is providing administrative law judge services, to the extent that such services are required under the Regulations, in connection with the matters set forth in this letter. Therefore, in accordance with the instructions in Section 766.5(a) of the Regulations, your answer should be filled with:

³ Administrative sanctions may include any or all of the following:

- The maximum civil penalty of \$10,000 per violation (see Section 764.3(a)(1) of the Regulations);
- Denial of export privileges (see Section 764.3(a)(2) of the Regulations); and/or
- Exclusion from practice (see Section 764.3(a)(3) of the Regulations).

U.S. Coast Guard ALJ Docketing Center
40 South Gay Street
Baltimore, Maryland 21202-4022
Attention: Administrative Law Judge

Also, in accordance with the instructions in Section 766.5(b) of the Regulations, a copy of your answer should be served on the Bureau of Export Administration at:

Office of the Chief Counsel for Export Administration
U.S. Department of Commerce
Room H-3839
14th Street & Constitution Avenue, N.W.
Washington, D.C. 20230

The Office of the Chief Counsel for Export Administration may be contacted by telephone at (202) 482-5311

Sincerely,

Dexter M. Price
Director
Office of Antiboycott Compliance

TABLE A

SCHEDULE OF ALLEGED VIOLATIONS OF SECTION 769.6
FAILURE TO REPORT IN A TIMELY MANNER

FMC CORPORATION
CASE No. 96-19

<u>FMC Reference No.</u>	<u>Date of Request</u>	<u>Country</u>	<u>Language</u>
93-13	Nov. 12, 1993	Jordan	A
93-20	Nov. 11, 1993	Oman	B
93-47	Oct. 13, 1993	Syria	C
None	Nov. 08, 1993	Syria	D
94-1	Jul. 22, 1993	Kuwait	E
331673	Feb. 07, 1994	Abu Dhabi	F
331923	Feb. 28, 1994	Lebanon	G

A. "Declaration for Jordan

We also certify that the goods enumerated are not of Israeli origin and do not contain Israeli materials, nor are they being exported from Israel".

B. "Vessel's Certificate: A CERTIFICATE FROM THE SHIPPING COMPANY THAT THE SHIP IS NOT ISRAELI OWNED AND NOT SCHEDULED TO CALL AT ANY ISRAELI PORT AND THAT IT IS NOT BLACKLISTED BY THE ARAB LEAGUE BOYCOTT COMMITTEE."

C. " ... We would confirm that the Syrian Protection Office requested now from the above applicant a declaration of adherence to boycott principles per enclosed form typed on company's paper, signed and duly legalized up to the Syrian Consul in Washington, or any other Arab Consul in Washington." (Eight point questionnaire about business relationships with Israel attached)

D. "WE DECLARE THAT NO RAW MATERIALS OF ISRAELI ORIGIN HAVE BEEN USED FOR THE PRODUCTION OR PREPARATION OF THE GOODS MENTIONED IN THIS INVOICE."

E. "Commercial Invoice, duly certifying the clause 'THE GOODS ENUMERATED IN THIS INVOICE ARE NEITHER OF ISRAELI ORIGIN NOR DO THEY CONTAIN ANY KIND OF MATERIALS OF ISRAELI ORIGIN.'"

F. "CERTIFICATE FROM INSURANCE CO STATING THAT IT IS NOT BLACKLISTED BY THE ARAB LEAGUE BOYCOTT OFFICE."

G. "We certify that the goods do not contain any Israeli material and that no Israeli product was used in the production and that no Israeli capital was invested (inserted) in the production of these goods."